

THE HIJRA COMMUNITY AND BEGGARY

Police Crackdown

In December 2010, former Police Commissioner Shankar M. Bidari launched a campaign against “aggressive begging” by hijras in response to complaints of sexual minorities pestering motorists for money at traffic junctions and indulging in illegal activities.¹ The People’s Union for Civil Liberties publicly condemned this action, arguing that the criminalisation of “either poverty or sexuality of a community are against the fundamental rights and freedoms constitutionally guaranteed and are far out of proportion with the nature of offense considered.”² The new Bangalore City Police Commissioner Jyothiprakash Mirji initiated a similar measure in May 2011, giving his force a three-day deadline to curb the eunuch “menace” at various signal junctions across the city. The police were authorised to arrest such offenders under the Karnataka Police Act and book them either on charges of creating a public nuisance or under the The Karnataka Prohibition of Beggary Act, 1975.³

Public Opinion

In the past hijras’ traditional occupation was singing, dancing and performing blessings at auspicious occasions like births and marriages. However, as times have changed the community has found it more and more difficult to earn their livelihood through this sort of work.⁴ Social prejudices towards hijras makes it difficult for them to obtain mainstream jobs and many find begging and sex work to be their only alternatives.

Popular stereotypes dictate much of the interactions between hijras and the general population: some men still believe touching or speaking with a hijra will render them impotent, while others believe it a bad omen if a hijra exposes herself in front of them⁵ and accordingly offer hijras cash in fear of the potential of such interactions.

The argument was made and rejected in one Gujarat High Court case⁶ that begging constitutes a part of Indian culture and tradition—as the ancient Sadhus and Buddhist monks used to live on

¹ Staff Reporter, *Police to stem aggressive begging by hijras*, The Hindu (Dec. 14, 2010), www.hindu.com/2010/12/14/stories/2010121461930400.htm.

² “Police Crackdown on Hijras,” Peoples’ Union for Civil Liberties - Karnataka press release, May 13, 2011 on PUCL-K website, www.puclkarnataka.org/?p=507 (last visited Jun. 9, 2011).

³ Hemanth Kashyap, *Top Cop Gives His Men Three Days To Put An End To Eunuch Menace*, Bangalore Mirror, (May 13, 2011) www.bangaloremirror.com/index.aspx?page=article§id=1&contentid=2011051320110513001823509858f13d0.

⁴ Matt Wade, *Modern World Plays Havoc With Age-Old Livelihood*, The Sunday Morning Herald (Jan. 8, 2011) www.smh.com.au/world/modern-world-plays-havoc-with-ageold-livelihood-20110107-19ity.html#ixzz1Npp7tocz.

⁵ *Id.*

⁶ *Sushila Kanwar Poonam Kunwar And Ors. v. State Of Gujarat And Ors*, AIR 2000 Guj 194, (2000) 3 GLR 2359 (16.2.2000).

daily alms, beggars today follow in this tradition. This argument proves fairly unpopular with the general public as well: according to The People’s Union for Civil Liberties – Bangalore Chapter’s 2011 Beggary Survey,⁷ the majority of respondents (44%) believed “laziness” was the reason people begged⁸.

The PUCL survey comes in response to the media coverage and public outrage surrounding the deaths of 94 people in Bangalore’s “beggars homes” in August 2010. The deaths have since been attributed to extremely poor living conditions, quality of food, and hygiene for detainees. Although the population surveyed was split almost equally on whether begging should be a crime, over 80% felt the government should take responsibility for beggars and almost 75% felt that this responsibility should be applied through the availability of voluntary shelters.

The Karnataka Prohibition of Beggary Act, 1975 and Hijras

The Karnataka Prohibition of Beggary Act, 1975 is formulated to prohibit begging in all areas in which this Act is in effect⁹ and to provide for the detention, training and employment, trial and punishment, and relief and rehabilitation of beggar offenders in the State of Karnataka.

A “beggar” is defined by the Act as any person other than a child who: solicits or receives alms in a public place whether or not under any pretense such as singing, dancing, fortune telling, performing tricks, or selling articles,¹⁰ enters any *private* premises to solicit or receive alms (anything given gratuitously to a beggar, such as money, cooked or un-cooked food, grains or clothing, or any other thing of value¹¹), exposes or exhibits with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of a human being or of an animal,¹² allows himself to be used as an exhibit for this purpose, or having no visible means of subsistence, wanders about or remains in any public place in such condition or manner as makes it likely that he exists by soliciting or receiving alms.¹³

The vague language of the Act grants the Karnataka Police broad powers to arrest,¹⁴ confine to Receiving Centres¹⁵ or Relief Centres,¹⁶ order removal to a mental hospital or a leper asylum or

⁷ Peoples’ Union for Civil Liberties, Bangalore Chapter, Survey: A Public Survey on Beggary (2011), available at <http://puclkarnataka.org/?p=489> (last visited Jun. 9, 2011).

⁸ Approximately 34% of respondents believed people beg due to need.

⁹ KPBA, Sec. 3.

¹⁰ KPBA, Sec. 2(2)(a).

¹¹ KPBA, Sec. 2(1).

¹² KPBA, Sec. 2(2)(c).

¹³ KPBA, Sec. 2(2)(d).

¹⁴ KPBA, Sec. 11(1).

¹⁵ For not longer than twenty-four hours without the authority of a magistrate. KPBA, Sec. 11(1).

¹⁶ For a period not less than one year, but which may extend to three years. KPBA, Sec. 12.

other place of safe custody (there to be kept and treated as the Government directs)¹⁷ any person who the Police believe wanders or remains in a public space in such a manner or condition that makes it “likely” according to their subjective opinion that she exists by soliciting or receiving alms. Aside from any problematic aspects of the KPBA and its treatment of impoverished individuals itself, this Act allows popular, if inaccurate, perceptions of ‘what a beggar looks like’ to pervade police implementation of the law.

The presumed criminality of the ostensibly poor¹⁸ is also extended to groups,¹⁹ like for example, hijras and other gender minorities as objects of the former Criminal Tribes Act. The media has further strengthened the link between this previously ‘criminal’ group and the crime of begging, charging hijras with creating a “menace”²⁰ to the city through their alleged ‘harassment’ and ‘forcible’ extraction of money from Bangalore motorists at traffic junctions.

Commentators²¹ however, have argued that terms connoting brute force are inaccurate at best; motorists’ and pedestrians’ interactions with hijras have less to do with actual coercion and more to do with the popular fear that “the hijra who approaches you will touch you in inappropriate ways and shame you in public if you do not pay.”²² Given the persistence of such prejudicial links between groups and crime in the minds of the public and Police, the broad language of the KPBA fails to keep this discrimination in check through clear guidelines and limits to implementation of this Draconian law.

The resulting targeted “crackdowns” on the hijra community in response to complaints of begging or harassment by individual hijras²³ in effect maintain the formally repealed Criminal Tribes Act’s criminalisation of entire social groups rather than prosecution of individuals on the basis of their conduct. It also supports further discrimination of an already marginalised social group based on motorists’ and pedestrians’ discomfort with public manifestations of sexuality, popular generalisations and stereotypes, and privileged conceptions of ‘harassment’ and personal space requirements.

¹⁷ KPBA, Sec. (14)(1).

¹⁸ See Usha Ramanathan, *Ostensible Poverty, Beggary and the Law*, 43 ECONOMIC AND POLITICAL WEEKLY 33 (2008).

¹⁹ See Meena Radhakrishna, *Laws of Metamorphosis: From Nomad to Offender* in CHALLENGING THE RULE(S) OF LAW: COLONIALISM, CRIMINOLOGY AND HUMAN RIGHTS IN INDIA (Kalpana Kannabiran & Ranbir Singh eds., 2008) for discussion of the link between lawmakers understanding of beggars and begging as a crime and the colonial understanding of the nomads and wandering tribes of India as comparable to the British’s own vagrants, ‘gypsies,’ Irish minority and poor. The author argues this understanding is reflected in the Bombay Prevention of Begging Act, 1959, the KPBA, and their predecessors.

²⁰ D.V.L. Padma Priya, *It's a different menace!*, The Hindu (Sep. 13, 2004) <http://www.hindu.com/edu/2004/09/13/stories/2004091300350400.htm>.

²¹ Nitya Vasudevan, *Beg deal: The proposed crackdown on hijras conceals a complex attitude towards touch*, says Nitya Vasudevan; Time Out Bengaluru, www.timeoutbangalore.com/bangalorebeat/bangalorelocal_details.asp?code=288&source=1.

²² *Id.*

²³ *Supra* note 1.

Contemporary Law and Policy

The United Nations High Commissioner for Human Rights²⁴ Draft Guiding Principles on Extreme Poverty and Human Rights recognizes “extreme poverty and exclusion from society” as violations of human dignity and establishes that discrimination against those suffering under these conditions “must be punished as a violation of human rights.”²⁵

Acknowledging this in its April 2009 report on the “Need for Ameliorating the lot of the Have-nots Supreme Court’s Judgements,” the Law Commission of India²⁶ notes:

The poor are not poor simply because they are less human or because they are physiologically or mentally inferior to others whose conditions are better off. On the contrary, their poverty is often a direct or indirect consequence of society’s failure to establish equity and fairness as the basis of its social and economic relation.

In recognition of this responsibility, the Gujarat High Court ruled in *Sushila Kanwar Poonam Kunwar And Ors. v. State Of Gujarat And Ors.*²⁷ that administrative assistance can be sought from the Government for bringing beggars and hijras to the main stream of social life and ensuring their fundamental rights to pursue legally permissible vocations. Begging, however, may not be claimed as a vocation. The Court argues that this claim has not been authorised by any law and ruled that recognition of a right to seek alms cannot be granted.

The Supreme Court of India has also recognized the importance of government assistance for impoverished and underserved populations, issuing guidelines on the provision of shelters in *People’s Union for Civil Liberties v. Union of India.*²⁸ These require all the State Governments to provide one night shelter for a population of one lakh in the metropolitan towns.

Responsibilities of the State were reaffirmed yet again in the case of *Abhipraay Welfare v. Govt. of the State of A.P. and Ors.*²⁹ Petitioner welfare society filed a writ of mandamus on the ground that the State failed to take proper steps in eradicating begging in accordance with Section 12 of Andhra Pradesh Prevention of Begging Act, 1977. The Andhra Pradesh High Court declared that

²⁴Office of the High Commissioner for Human Rights, A Technical Review: Draft Guiding Principles on Extreme Poverty and Human Rights – The Rights of the Poor, available at www2.ohchr.org/english/issues/poverty/consultation/docs/Technical_Review_DGPs.pdf (last visited Jun. 10, 2011).

²⁵ *Id.*

²⁶ Government of India Law Commission of India, Report No. 223: Need for Ameliorating the lot of the Have-nots—Supreme Court’s Judgments (2009), available at lawcommissionofindia.nic.in/reports/report223.pdf (last visited Jun. 10, 2011).

²⁷ *Supra* note 6.

²⁸ WP(C) 196/2001.

²⁹ AIR2001AP273, (15.02.2001).

the State is cast with statutory obligation to implement provisions of the Act and also directed the government of Andhra Pradesh to conduct survey of beggars and construct at least 25 “beggar homes” for each area.

This trend continues in the state of Karnataka where the Karnataka State Human Rights Commission passed an order suggesting (among other recommendations) that adequate medical facilities must be provided to “beggars home” inmates.³⁰

The Honorable Delhi High Court in *Ram Lakhan v. State* echoes these sentiments in its discussion of offenders of the Bombay Prevention of Begging Act, 1959, stating that while the prevention of begging is the object of the said Act, “one must realise that embedded in this object are the twin goals-Nobody should beg and nobody should have to beg.”³¹

The single judge in this decision discusses beggary in the context of potential Constitutional protections. While conceding that upon first impression the idea that “begging” is protected under Article 19(i)(a) of the Constitution may appear “quaint,” the judge references a United States criminal court decision³² which held begging to be “constitutionally protected speech.”³³ From this perspective, begging constituting part of the Constitutional guarantee of freedom of speech and expression “can only be subjected to reasonable restrictions by law in the interest of, inter alia, public order, decency or morality.”³⁴

The weight of this argument is limited given the issue before the court, which did not bring the validity of the Act in question. Discussion of begging as a form of constitutionally protected speech is thus, to date, mere dicta in Indian courts. The status quo continues in the implementation of the Karnataka Prohibition of Beggary Act in spite of this discussion by the Delhi High Court.

³⁰ Peoples’ Union for Civil Liberties - Karnataka, Memo: Draft Memorandum on Implementation of the Karnataka Prohibition of Beggary Act, 1975 (2011), available at www.puclkarnataka.org/?p=519 (last visited Jun. 9, 2011).

³¹ 137(2007) DLT173 (05.12.2006).

³² See *The People of the State of New York v. Eric Schrader*, 617 N.Y.S. 2d 429 (1994).

³³ *Id.*

³⁴ WP(C) 196/2001.